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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHRISTIAN LEGAL SOCIETY CHAPTER)
OF THE UNIVERSITY OF CALIFORNIA,)
HASTINGS COLLEGE OF THE LAW a/k/a)
HASTINGS CHRISTIAN FELLOWSHIP, a)
student organization at University of)
California, Hastings College of the Law,)

Plaintiff,

vs.

MARY KAY KANE, *et al.*,

Defendants.

Steven Burlingham (No. 88544)

GARY, TILL & BURLINGHAM

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Civil Action No.: C 04 4484 JSW

Action Filed: October 22, 2004

PLAINTIFF'S UNOPPOSED MOTION TO
STAY THE ORDER TAXING COSTS
PENDING APPEAL

Judge: Hon. Jeffrey S. White

PLAINTIFF'S MOTION TO STAY THE ORDER TAXING COSTS PENDING APPEAL

COMES NOW Plaintiff Christian Legal Society Chapter of the University of California, Hastings College of the Law a/k/a Hastings Christian Fellowship and, pursuant to Rule 8(a)(1)(A) of the Federal Rules of Appellate Procedure, hereby moves this Court for an order staying the Order Taxing Costs Against Plaintiff entered in this case on May 23, 2006, pending the outcome of this case on appeal. In support of its motion, Plaintiff shows as follows:

1. Judgment was entered against the Plaintiff in this case on April 17, 2006.

2. On April 28, 2006, Defendant Hastings Outlaw filed a Bill of Costs claiming costs in the amount of \$423.25.

3. On May 12, 2006, Plaintiff filed a Statement of Non-Opposition to Defendant Hastings Outlaw's Bill of Costs indicating that it had no objections to the items of cost claimed and specifically reserving its right under Rule 8 of the Federal Rules of Appellate Procedure to seek a stay pending appeal.

4. On May 16, 2006, Plaintiff filed a Notice of Appeal in this action appealing this Court's Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendants' Motions for Summary Judgment.

5. On May 23, 2006, this Court entered an Order Taxing Costs Against Plaintiff in the amount of \$423.25.

6. On June 1, 2006, Plaintiff filed an Amended Notice of Appeal in this case which included, among other things, this Court's Order Taxing Costs Against Plaintiff. A true and correct copy of the Amended Notice of Appeal is attached.

7. The Ninth Circuit has held that "an order fixing costs in the district court, while an appeal [is] pending, 'should be considered an inseparable part' of the pending appeal." *California Union Ins. Co. v. American Diversified Sav. Bank*, 948 F.2d 556, 567 (9th Cir. 1991), quoting *Twentieth Century Fox Film Corp. v. Goldwyn*, 328 F.2d 190, 223 (9th Cir. 1964).

8. Should Plaintiff prevail on the merits of its appeal to the Ninth Circuit Court of Appeals, this Court's Order Taxing Costs Against Plaintiff will automatically be reversed. "Where a reviewing court reverses a district court's judgment for the prevailing party . . . both

the underlying judgment and the taxation of costs undertaken pursuant to that judgment are reversed.” *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1996). *See also Farmer v. Arabian American Oil Co.*, 379 U.S. 227, 232-33 (1964) (same); *Browne v. Microsoft Corp.*, 48 Fed. Appx. 620, 622 (9th Cir. 2002) (same). Thus, it makes little sense to have Plaintiff pay costs now when Plaintiff’s liability for costs may be affected by the disposition of this case on appeal.

9. On May 31, 2006, Counsel for Plaintiff consulted Counsel for Defendant Hastings Outlaw concerning this motion, and Defendant Hastings Outlaw does not oppose this motion.

WHEREFORE, Plaintiff respectfully requests that the Court enter the attached order staying the Order Taxing Costs Against Plaintiff pending the outcome of this case on appeal, and grant such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted, this 2nd day of June, 2006.

/s/ Steven H. Aden

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFF'S UNOPPOSED MOTION TO STAY THE ORDER TAXING COSTS PENDING APPEAL was electronically filed through the District Court's ECF system and, pursuant to Local Rule 5-5(b) and the Court's General Order No. 45 Electronic Case Filing (§ IX.A), was thereby served by means of the ECF Notice of Electronic Filing to the parties and counsel of record as follows:

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This 2nd day of June, 2006.

/s/ Steven H. Aden
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